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Overseas Buildings Operations

15 FAM 160

FUNDING RESPONSIBILITIES OF AGENCIES OCCUPYING U.S. GOVERNMENT-HELD PROPERTY

*(CT:OBO-45; 04-24-2014)
(Office of Origin: OBO)*

15 FAM 161 INTRODUCTION

(CT:OBO-45; 04-24-2014)

This section covers the following costs related to U.S. Government-owned or - leased residential and nonresidential space: leasehold costs; building operating expenses (BOE); costs related to preparing operating lease (OL) residences for occupancy; telephone costs; taxes; and condominium fees. Funding of maintenance and improvement costs is in 15 FAM 600; funding of furniture, furnishings, appliances, and equipment is in 15 FAM 700; and funding of fire protection equipment is in 15 FAM 800.

15 FAM 162 U.S. GOVERNMENT-OWNED AND - LEASED SPACE

15 FAM 162.1 U.S. Government-Owned/Capital Lease (GO/CL) Space

(CT:OBO-33; 10-11-2013)

- a. **Lease costs for capital lease (CL) nonresidential and residential space** are fully funded at the start of the lease by the Bureau of Overseas Buildings Operations (OBO) regardless of the occupying agency, except for certain USAID properties.
- b. **Building operating expenses (BOE)** for U.S. Government-owned/capital lease (GO/CL) nonresidential and residential spaces are the responsibility of the occupying agency, either directly or through International Cooperative Administrative Support Services (ICASS). BOE costs for Department of State occupied facilities are only paid from Diplomatic and Consular Program (D&CP) funding.
- c. **U.S. Agency for International Development (USAID) operating costs** cover

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USAID properties paid by USAID funds. Various funds may be authorized and used for maintenance and repair costs. Operating expenses (OE) funds or one of the project-funded accounts may be charged, if appropriate. The mission should also consider trust funds, if available and with the agreement of the host government, and U.S.-held currency. USAID will determine which funds are to be used for USAID-occupied property provided the choice does not conflict with post's use of pooled government housing, consolidation of leasing services, or other joint State/USAID management programs.

- d. **Other costs** funded by OBO include maintenance and repair, capital construction, abatement of safety, health, and environmental hazards; security upgrades; and major rehabilitation projects for GO/CL nonresidential and residential property under the jurisdiction of the Department of State, with the following exceptions (see 15 FAM 600 and 15 FAM 900):
 - (1) Alterations peculiar to the needs of another agency or for space not normally usable by other agencies (such as dark rooms, libraries, and vaults) and subsequent restoration of that space to its normal condition must be funded by the using agency upon approval from OBO and the parent agency; and
 - (2) Repairs necessitated by deliberate acts or negligence must be the responsibility of the individual involved or the agency occupying the space, as appropriate under the circumstances.
- e. Except as described in 6 FAH-5 H-341, no other sources of funding should be used for maintenance, repair, improvement, or construction activities without specific legislative authority.

15 FAM 162.2 Operating Lease (OL) Space

(CT:OBO-33; 10-11-2013)

a. **Nonresidential space - sole occupancy:**

- (1) **Non-State:** For nonresidential operating lease (OL) properties occupied solely by a single agency, lease costs and building operating expenses (BOE) such as utilities, custodial services, and other operating costs, are funded by that agency. Agencies may subscribe to receive BOE services for OL nonresidential properties through the ICASS OL Nonresidential Building Operations Cost Center if that is appropriate based on conditions at post, including the ICASS service provider's ability to provide the service;
- (2) **State:** When State (program) is the sole occupant, the Bureau of Overseas Buildings Operations (OBO) funds lease costs and D&CP funds BOE. State may subscribe to receive BOE services for OL nonresidential properties through the ICASS OL Nonresidential Building Operations Cost Center if that is appropriate based on conditions at post, including the

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ICASS service provider's ability to provide the service; and

- (3) **ICASS:** For nonresidential property occupied by ICASS staff, lease costs are funded from the OBO ICASS allotment and BOE costs are funded from the regional bureau ICASS allotment.
- b. **Nonresidential space - joint occupancy:** When nonresidential operating lease (OL) space is occupied by several agencies, those agencies are charged for their proportionate share of lease costs and BOE through ICASS unless the situation complies with all criteria for direct charging per 6 FAH-5 H-313. This also applies when a tenant vacates a space. As required by 6 FAH-5 H-018.4 (Termination Notice), tenants of OL nonresidential joint occupancy space must provide a 6-month notice on or before April 1 or October 1 of their intent to vacate space. For example, if a customer agency provided the post ICASS council written intent to terminate its lease services on April 2, the 6-month notification period would begin on October 1 of that year and terminate on March 31 of the following year. During the 6-month notification period, the vacating tenant continues to bear the cost of the space unless another tenant is assigned. After the required 6-month notification period expires, unassigned nonresidential space is charged via ICASS proportionally to the remaining tenants.
- c. **Residential space:**
- (1) **Non-State:** Lease costs for OL residences are funded by the occupant's agency directly. Only in cases that do not meet the criteria for direct charging (6 FAH 5 H-310) should posts consider charging for OL residential leases through ICASS. Agencies may subscribe to receive BOE services for OL residential properties through the ICASS OL Residential Building Operations Cost Center if that is appropriate based on conditions at post, including the ICASS service provider's ability to provide the service;
- (2) **State:** For OL residences occupied by Department of State program employees, OBO funds lease costs and D&CP funds BOE. State may subscribe to receive BOE services for OL residential properties through the ICASS OL Residential Building Operations Cost Center if that is appropriate based on conditions at post, including the ICASS service provider's ability to provide the service; and
- (3) **ICASS:** For OL residences occupied by ICASS employees, lease costs are funded from the OBO ICASS allotment and BOE costs are funded from the regional bureau ICASS allotment.

d. **Preparation for occupancy of OL residences:**

- (1) It may be necessary to prepare leased property for occupancy in order to meet fire safety, safety, hygiene, comfort, and efficiency standards, as well as to meet specific operational requirements. Posts may expend up to \$5,000 from D&CP (for State program officers) or regional bureau ICASS funds (for ICASS service providers), as appropriate, to prepare Department

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of State-held OL residential properties for occupancy. For all other agencies, the occupying agency pays similar make-ready expenses for residential properties. Justification and accounting documentation should be maintained in the lease file;

- (2) Each regional bureau, the Bureau of International Organization Affairs (IO), and parent agency may establish a limitation on make-ready expenses below this ceiling and, at its own discretion, establish guidelines and procedures under which its posts may apply for release from the limitation. This limitation applies to all agencies under the authority of the chief of mission (COM), except USAID and the Defense Intelligence Agency (DIA), which retain control over such expenditures through their own statutory authority and administrative guidance; and
- (3) Justification and accounting documentation should be maintained in the post's lease file and make-ready expenditures should be reported to the funding entity.

15 FAM 163 RESIDENCES OCCUPIED BY TANDEM COUPLES

(CT:OBO-33; 10-11-2013)

- a. When members of a tandem couple are employed by different agencies and occupy a U.S. Government operating lease (OL) residence, all costs including rent, BOE, and preparation for occupancy, are shared evenly between the two agencies. This may be accomplished through a use agreement. If one member of the tandem couple is an ICASS employee, the cost sharing can be accomplished through the appropriate reflection of costs and square meter counts in the ICASS software (see also 15 FAM 237).
- b. When members of a tandem couple working for different agencies occupy a U.S. Government-owned/capital lease (GO/CL) residence in the custody of the Department of State, the lease cost is paid by the OBO and BOE costs are shared as in paragraph a of this section.
- c. When one member of a tandem couple is authorized designated housing (chief of mission residence (CMR), deputy chief of mission residence (DCMR), or consulate general residence (CGR), principal officer residence (POR)), the Department of State will pay all costs. OBO will fund lease costs, and BOE costs will be paid with D&CP funding.
- d. When one member of a tandem couple is authorized dedicated housing and the housing is OL, the agency for which the unit is dedicated will pay all costs.

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15 FAM 164 DISPLACEMENT AND CHANGES IN OCCUPANCY

(CT:OBO-33; 10-11-2013)

- a. **Nonresidential space:** When one agency's activities or personnel are moved from assigned nonresidential space to accommodate another agency's activities or personnel, the agency that will occupy the space pays the following:
 - (1) Moving costs;
 - (2) Basic fit-out of new space for the displaced agency; and
 - (3) Lease costs and building operating expenses (BOE) until funds for the continuing costs of alternative space can be budgeted by the displaced agency, but not to exceed costs accruing to the end of the following fiscal year.
- b. **Residential leased space:** When personnel of one agency are assigned to residential quarters previously funded by another agency, funding responsibility will shift (see also 15 FAM 233). The vacating agency remains responsible for the ongoing lease and related costs of the residential unit until the post interagency housing board (IAHB) assigns it to another agency. The shift in funding responsibility takes place on the date of assignment by the IAHB or the day following the date the current employee moves out, if later than the date of assignment, not on the date of occupancy of the unit. (Leases may be retained on units between occupancies for no longer than 90 days unless approved by OBO and the occupying agency; see 15 FAM 313.5.)

15 FAM 165 SECURITY COSTS

15 FAM 165.1 Nonresidential U.S. Government-Owned and Leased Properties

(CT:OBO-33; 10-11-2013)

a. Physical security upgrades:

- (1) OBO funds physical security upgrades at all U.S. Government-owned and capital lease nonresidential properties, and for operating lease nonresidential properties that are occupied solely by Department of State;
- (2) For operating lease facilities occupied by multiple agencies, each agency must transfer funding to OBO for its share of the cost of physical security upgrades via an Economy Act agreement, or other applicable authority. ICASS funds may not be used for construction activities, including security upgrades; and
- (3) Physical security upgrades at facilities owned or leased by a non-State

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agency are the funding responsibility of that agency.

NOTE: Physical security upgrades include perimeter walls and fences, access control facilities, public access and perimeter controls, door and window grilles, pedestrian and vehicle gates, vehicle barriers, security lighting, and forced entry/ballistic-resistant (FE/BR) doors and windows.

b. Technical security system (TSS) upgrades:

- (1) OBO funds TSS upgrades at newly acquired/constructed U.S. Government-owned and capital lease nonresidential properties, and for operating lease nonresidential properties that are occupied solely by Department of State;
- (2) The Bureau of Diplomatic Security (DS) funds the installation and maintenance of TSS upgrades at existing U.S. Government-owned and capital lease nonresidential properties, and for operating lease nonresidential properties that are occupied solely by Department of State;
- (3) For operating lease facilities occupied by multiple agencies, ICASS funds are used for TSS upgrades; and
- (4) TSS upgrades at facilities owned or leased by a non-State agency are the funding responsibility of that agency.

NOTE: TSS upgrades include electronic access control systems, closed circuit televisions (CCTV), and intrusion-detection systems.

c. Vehicle barriers:

- (1) OBO is responsible for the installation and lifecycle replacement of vehicle barriers;
- (2) ICASS funds are used for routine inspections and maintenance of vehicle barriers; and
- (2) DS funding is used for vehicle barrier repairs that are not considered routine maintenance.

15 FAM 165.2 Residential, U.S. Government-Owned/Capital Lease (GO/CL) Properties

(CT:OBO-33; 10-11-2013)

- a. Security upgrades to newly acquired U.S. Government-owned/capital lease (GO/CL) residential properties are considered part of the initial acquisition cost and are to be funded from the same acquisition funding source.
- b. Perimeter physical security upgrades at existing U.S. Government-owned or capital lease (GO/CL) residences are funded by OBO, except for USAID-owned and CL residences. These upgrades include perimeter fences, walls, and gates.
- c. OBO is responsible for the installation and lifecycle replacement of vehicle barriers. ICASS funding is used for routine maintenance of vehicle barriers at

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shared properties. DS funding is used for vehicle barrier repairs. Note: Active anti-ram barriers are provided at residences or residential compounds only under extreme conditions, and with OBO and DS approval.

- d. DS funds all security upgrades from the residence facade inward, which may include security lighting, substantial doors, locks, window grilles (including release devices), shatter-resistant window film, and alarms, and may also include a CCTV, safe area on a residential compound, safe haven in a residence, or other security upgrade.

15 FAM 165.3 Residential, Operating Lease (OL) Properties

(CT:OBO-33; 10-11-2013)

- a. Post should attempt to have the landlord/owner complete residential security upgrades at no cost to the U.S. Government. When residential security upgrades are not available at no cost, post must identify the costs of residential security upgrades installed by the landlord/owner and state them in the lease as a separately defined line item along with the one-time cost charged to the U.S. Government.
- b. When U.S. Government funding is required for residential security upgrades at OL properties, the following funding sources should be used:
 - (1) For new National Security Decision Directive NSDD-38 positions, it is the parent agency that is responsible for all costs associated with the position during the first year, and this includes residential security upgrades;
 - (2) For residences outside the mission housing pool, it is the parent agency that is responsible for funding the residential security upgrades. For State LQA housing, security upgrades are funded through DS;
 - (3) DS funds the residential security upgrades for all other OL properties with a few exceptions, such as housing for Consular Service agents, U.S. citizen direct-hire personnel assigned to international organizations not in mission housing, locally hired personal services contractors, Voice of America correspondents, commercial contractors assigned to post, and DOD employees falling under a geographic combatant commander; and
 - (4) Vehicle barriers (i.e., active anti-ram barriers) should not be installed at OL residences unless there are exceptional circumstances, and post has OBO and DS approval. When required, DS funds the installation, maintenance, and repairs for this residential security upgrade.

15 FAM 166 PAYMENTS FOR TELEPHONE SERVICE

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15 FAM 166.1 Payment of Initial Installation Costs

(CT:OBO-33; 10-11-2013)

Post pays the initial installation costs of telephones in U.S. Government-owned or -leased residences occupied by Department of State program employees using the D&CP appropriation allotted by the regional bureaus or the Bureau of International Organization Affairs (IO). ICASS funds initial installation for ICASS employees. The Department of State does not pay the initial installation costs when residences are occupied by other agency personnel. Other agency telephone installation costs require the approval of that agency. Under no circumstances may posts pay for installation of private telephone service in quarters obtained under living quarters allowances (LQAs); the cost of such installation may be claimed by the employee under the Foreign Transfer Allowance (Standardized Regulations, section 240).

15 FAM 166.2 Payment of Continuing Charges

(CT:OBO-33; 10-11-2013)

- a. Except as provided in this section, the occupant is required to pay the continuing service charges on all private telephones in U.S. Government-owned or -leased residential quarters.
- b. Continuing charges on all telephones required in the chief of mission/principal officer (COM/PO) and U.S. Government representative to international organization residences may be reimbursed by post-held D&CP funds. However, no reimbursement will be made for personal calls.
- c. In the absence of the COM or U.S. Government representative to an international organization for more than 1 month, reimbursement to the chargé d'affaires or acting U.S. representative to an international organization may be made from post-held D&CP funds retroactive to the first day of absence by the COM/PO or U.S. representative to an international organization.

15 FAM 166.3 Limitations on Payments for Telephone Service

(CT:OBO-33; 10-11-2013)

As a general rule, the post pays for the installation and removal of only one standard telephone instrument and the trunk line serving it in each U.S. Government-owned or -leased residence. The post or other agency may pay for the installation and removal of more than one instrument, upon the determination by the COM/PO or U.S. representative to an international organization or other agency head that additional service is required for official business or for security reasons, provided that existing allotments of funds are adequate.

15 FAM 166.4 Telephone Charges for Unassigned

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Residences

(CT:OBO-26; 02-28-2012)

When U.S. Government-held residential quarters are unassigned, continuing telephone service charges may be paid by the post from the appropriate allotment upon a finding by the single real property manager (SRPM), or his or her designee (for USAID, the executive officer), that such action will be more economical than the payment for removal and subsequent reinstallation, or that subsequent reinstallation cannot be made on a timely basis. In such cases, the vacating agency pays ongoing costs until a new occupant is assigned to the property (see also 15 FAM 164, paragraph b).

15 FAM 167 TAXES AND RATES

15 FAM 167.1 Policy

(CT:OBO-33; 10-11-2013)

The U.S. Government seeks tax exemptions, to the extent possible, on owned and leased real properties.

15 FAM 167.2 General Prohibition Against Payment of Taxes on Conveyance or Registration of Title

(CT:OBO-26; 02-28-2012)

No taxes on U.S. Government-owned or -leased property for the conveyance of title to property or for the registration of title documents, levied by the local government or a political subdivision thereof, will be paid unless authorized by the funding agency in the first instance of payment and approved by OBO.

15 FAM 167.3 Exemption from Taxes

(CT:OBO-33; 10-11-2013)

The post should make every effort to obtain exemption from taxes and rates on all or any of the following bases:

- (1) By invoking the provisions of treaties and conventions (such as the Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations) or other applicable agreements, such as bilateral consular conventions or friendship, commerce and consular rights agreements, or agreements concluded under authority of the Diplomatic Relations Act, 22 U.S.C. 254a;
- (2) By reciprocity, where applicable; and/or

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- (3) By the application of customary international law.

15 FAM 167.4 Occupier's Tax on Leased Property

(CT:OBO-26; 02-28-2012)

- a. The tax structure in some countries places realty taxes on the occupier rather than on the owner or might assess lease taxes on the tenant. Accordingly, the Department of State or USAID, as tenant in officially leased quarters, is liable for the tax in the absence of exemption. Therefore, in countries where there is such occupier's (tenant's) tax, leases should be drawn to permit exemption and the exemption should be secured, as such taxes levied on the tenant mission by the host government are granted exemption under the Vienna Diplomatic and Consular Conventions and certain bilateral agreements.
- b. By comparison, real property taxes that are levied on the owner of property and "passed along" in the lease to the U.S. Government as tenant are generally not granted exemption under governing treaties. In this instance, the lease should state that the owner or lessor will assume responsibility for making the payment of the taxes and the amount of the tax should be negotiated as part of and included in the total rental amount (but not specifically itemized in the clause regarding rental rate).

15 FAM 167.5 Specific Services Rendered/Beneficial Rates

(CT:OBO-33; 10-11-2013)

- a. When reporting on taxes assessed against U.S. Government-owned properties, the post should indicate whether the assessment is, in whole or in part, for "specific services rendered," sometimes called "beneficial rates." "Specific services rendered" or "beneficial rates" are the amounts charged (often as taxes) for services that benefit the property directly, such as water or sewer charges; refuse removal; and installation of sewers, gutters, or curbs. Such charges should be quantified in a manner that is reasonably related to the amount of goods or services provided, such as by gallon, age, or wattage. The U.S. Government normally pays these charges for "specific services rendered" or "beneficial rates" for U.S. Government-owned property without protest but refuses to pay, or pays under protest, general revenue taxes.
- b. For properties held under capital lease (CL) and operating lease (OL), taxes, assessments, and other charges of a public nature are normally considered the lessor's responsibility under the terms of the lease. Only with exception and after negotiation should post agree to assume responsibility for any of these types of payments.

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15 FAM 167.6 Tax Payments

(CT:OBO-45; 04-24-2014)

- a. All *real property tax payments that fall on the landowner or lessee and are paid directly to the taxing authority*, except for those associated with purchases of real property, are paid from post-held BOE funds or the user agency's operating expenses (OE) funds.
- b. *Payment of value added tax (VAT) for real property is the responsibility of the seller/landlord. To the extent that the U. S. Government is not granted an exemption from VAT, and the VAT costs on a purchase/lease is passed on to the buyer/lessee, the VAT payments should be treated as part of the purchase cost/rental payment. Unexempted VAT costs must be charged to the account that funded the purchase/lease.*

15 FAM 168 CONDOMINIUM FEES

(CT:OBO-33; 10-11-2013)

- a. Condominium fees typically cover maintenance, utilities, and other BOE for common areas of a building. At non-condo properties these costs are normally included in the rent.
- b. That portion of a condo fee that includes utilities, BOE expenses, Internet and cable television services, association dues, or specific assessments for use of common areas for recreation or for items of a personal service nature (e.g., tennis courts, health or exercise facilities, pools, concierge fees, servant's wages, tips, cleaning or servant's quarters that are not considered an integral part of the housing unit) is not a proper charge to the OBO leasehold or maintenance and repair function codes and should be charged to the appropriate D&CP or ICASS account (for ICASS service providers), or to the occupant if the charges are elective.
- c. Condo fees for Department of State operating lease (OL) properties, exclusive of utility costs, BOE, or specific assessments for use of recreational areas, whether included in the lease amount or separately denominated and not included as part of the lease payment, are properly chargeable to the OBO function code for leaseholds.
- d. In certain cases, condominium fees are associated with some U.S. Government-owned/capital lease (GO/CL) properties. Condo fees, exclusive of utility charges, BOE, or specific assessments for use of recreational areas, can be considered as routine maintenance of real property and, as such, are properly chargeable to the OBO function code for routine maintenance and repair.
- e. Procedures for payment of condo fees for agencies other than the Department of State should be developed in discussions with agency headquarters, but the occupying agency should pay the fees.

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15 FAM 169 ENERGY COST CONTROLS

15 FAM 169.1 Energy Management and Controls

(CT:OBO-33; 10-11-2013)

- a. Posts should reduce energy consumption and costs by using energy efficient products and practices. To the extent possible, posts must require vendors and suppliers to provide appropriate data that can be evaluated to assess the lifecycle costs of goods and equipment, including building systems components, lighting systems, and other energy-consuming appliances and equipment. Posts must provide OBO with routine utility cost and consumption data by means of the online "Utility Portal" or alternative method. OBO must work toward automating this data collecting process in an effort to increase accuracy and reduce the reporting burden on post. Information gained from utilities reporting must be used to inform energy savings opportunities for post and the Department.
- b. In posts where USAID missions are co-located in facilities with Department of State, post facility managers must include respective USAID missions' cost and consumption data in OBO's "Utility Portal" or alternative system. In those locations where USAID manages its own facilities (noncollocated), USAID executive officers are required to report their respective mission's energy cost and consumption data to USAID/W per annual instructions issued by M/MS/OMD.
- c. In addition, a vigorous policy should be pursued for turning off appliances, equipment, and lighting when not required in all functional and residential space. OBO (for Department of State facilities) or USAID/W - M/MS/OMD (for USAID-managed facilities) can assist posts by providing product information, assistance with audits of utility consumption, and information on energy-saving techniques. Large-scale conversion programs may be funded as repair and improvement (R&I) with OBO or USAID/W - M/MS/OMD approval.

15 FAM 169.2 Residential Cost Controls for Utilities

(CT:OBO-33; 10-11-2013)

- a. The single real property manager (SRPM) for the Department of State and the executive officer for USAID are responsible for ensuring that costs of utilities for U.S. Government-held residences are carefully controlled and held to reasonable levels. The SRPM and the USAID executive officer, in coordination with the post interagency housing board (IAHB), must take appropriate administrative measures, to include establishing utility ceilings for some or all residential quarters, as needed.
- b. To ensure that the use and cost are held to reasonable levels, and as a basis for establishing a ceiling, cost records for U.S. Government-held residential

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quarters must be maintained and data collected on utilities in comparable privately leased living quarters allowance/overseas housing allowance (LQA/OHA) quarters. The SRPM and the USAID executive officer, in coordination with the post IAHB, must ensure uniformity among the agencies at post in establishing ceilings or in taking other administrative action to control costs.